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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,126	03/02/2004	Erich Bayer	249971US6CONT	1132
22850	7590	09/20/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			HARVEY, DIONNE	
			ART UNIT	PAPER NUMBER
			2646	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/790,126	BAYER, ERICH
	<b>Examiner</b>	<b>Art Unit</b>
	Dionne N. Harvey	2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 August 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-29 is/are pending in the application.
- 4a) Of the above claim(s) 17-29 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Election/Restrictions***

1. Claims 17-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/15/2005.
  
1. This application contains claims 17-29 drawn to an invention nonelected with traverse in Paper filed 8/15/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 9-10,14,15** are rejected under 35 U.S.C. 103(a) as being unpatentable over C.H. Starkey (US 2,763,334) in view of DE29718483.

***Regarding claim 9,*** Starkey teaches in **figure 1 and figure 3**, an earpiece for behind-the-ear parts of hearing acoustics devices, comprising: a shank **9** adapted to follow an outer edge of a patient's cavum conchae **10,11**; and a straight forwardly

disposed portion **9b** which reads on “a broadened portion” defining a bore configured to hold a signal conductor **8** in an upper half of the patient's auditory canal.

Starkey does not clearly teach an angled traverse segment connected with the shank and being configured to be disposed above the patient's antitragus and to extend in a direction of the patient's porus acusticus externus; OR that the broadened portion is disposed on the angled traverse segment and prevents the signal conductor from covering a portion of a lower half of the patient's auditory canal.

DE29718483 teaches an earpiece having a shank portion **14**, and also comprising an angled traverse segment **15** connected with the shank portion, the traverse segment **15** being configured to be disposed above the patient's antitragus and extending in a direction of the patient's porus acusticus externus; the earpiece of DE29718483 also comprises a broadened portion **20** being disposed on the angled traverse segment **15**, the broadened portion further being constructed so as not to cover a portion of a lower half of the patient's auditory canal.

It would have been obvious for one of ordinary skill in the art at the time of the invention to alter the device of Starkey per the teachings of DE29718483, providing a broadened portion **20** which does not completely occlude the auditory canal of the wearer, permitting the wearer to hear sounds from the surrounding environment, and furthermore incorporating a traverse segment **15** for securely positioning the broadened portion and sound tube in the upper portion of the auditory canal.

*Regarding claim 10*, Starkey teaches a flexible signal conductor **8** disposed in the broadened portion.

***Regarding claim 14,*** DE29718483 teaches that the shank 14 comprises a second shank (***see that portion of the earpiece which is located below the angled traverse segment 15***) connecting with the angled traverse segment 15 and extending in an opposite direction to the shank 14, the second shank configured to follow the outer edge 16 of the patient's cavum conchae.

***Regarding claim 15,*** DE29718483 teaches that the second shank is adapted to extend to a location behind the patient's antitragus.

1. **Claims 11-13, 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over C.H. Starkey (US 2,763,334) in view of **DE29718483** and further in view of Boesen (US 6,094,492).

***Regarding claims 11 and 13,*** although the combined teachings of Starkey and DE29718483 teach that the broadened portion of the earpiece may be disposed only in the upper region of the patients auditory canal, their combination does not clearly teach that the auditory canal tab 7, is disposed only in the upper region of the patient's auditory canal, having a diameter that is less than a diameter of the patient's auditory canal.

Boesen teaches that a tab portion 12 for an earpiece, wherein the tab 12 has a diameter that is less than a diameter of the patient's auditory canal.

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Starkey, DE29718483 and Boesen, providing a tab member which does not occlude the wearer's auditory canal, thus permitting the wearer to hear sounds from the surrounding environment.

**Regarding claim 12**, Starkey teaches in **figure 1 and in figure 3**, an earpiece for behind-the-ear parts of hearing acoustics devices, comprising: a shank **9** adapted to follow an outer edge of a patient's cavum conchae **10,11**; and a straight forwardly disposed portion **9b** which reads on "a broadened portion" including an auditory canal tab **7** defining a bore configured to hold a signal conductor **8** in an upper half of the patient's auditory canal.

Starkey does not clearly teach an angled traverse segment connected with the shank and being configured to be disposed above the patient's antitragus and to extend in a direction of the patient's porus acusticus externus; OR that the broadened portion is disposed on the angled traverse segment and prevents the signal conductor from covering a portion of a lower half of the patient's auditory canal.

DE29718483 teaches an earpiece having a shank portion **14**, and also comprising an angled traverse segment **15** connected with the shank portion, the traverse segment **15** being configured to be disposed above the patient's antitragus and extending in a direction of the patient's porus acusticus externus; the earpiece of DE29718483 also comprises a broadened portion **20** being disposed on the angled traverse segment **15**, the broadened portion being constructed so as not to cover a portion of a lower half of the patient's auditory canal, as shown in the figure provided.

It would have been obvious for one of ordinary skill in the art at the time of the invention to alter the device of Starkey per the teachings of DE29718483, providing a broadened portion **20** which does not completely occlude the auditory canal of the wearer, permitting the wearer to hear sounds from the surrounding environment, and

furthermore incorporating a traverse segment **15** for securely positioning the broadened portion and sound tube in the upper portion of the auditory canal.

The combined teachings of Starkey and DE29718483 does not clearly teach that the auditory canal tab **7**, is disposed only in the upper region of the patients auditory canal.

Boesen teaches that a tab portion **12** for an earpiece, wherein the tab **12** has a diameter that is less than a diameter of the patient's auditory canal.

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Starkey, DE29718483 and Boesen, providing a tab member which does not occlude the wearer's auditory canal, thus preventing the wearer from hearing sounds from the surrounding environment.

***Regarding claim 16***, Boesen teaches, in **column 2, line 53- column 3, lines 26**, that the angled traverse segment, and the broadened portion is adapted for use with cochlear implant microphones.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne N. Harvey whose telephone number is 571-272-7497. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dionne Harvey  
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Suhani  
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PRIMARY EXAMINER